Inland Steel Company *and* Dale Ray. Case 13-CA-18261

November 9, 1981

DECISION AND ORDER*

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 5, 1981, Administrative Law Judge Leonard M. Wagman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed cross-exceptions and supporting brief and in response to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[2] as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, Inland Steel Company, East Chicago, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Make whole all mechanical maintenance employees of No. 11 Coke Battery who suffered reduction of their lunch break from 30 minutes to 20 minutes and the elimination of their washup time by paying such employees for 15 minutes per day 5 minutes for washup time and 10 minutes for lunchtime) from July 20 1978, to September 23, 1978."

2. Substitute the following for paragraph 2(d).

"(d) Remove and expunge from its files any reference to the two disciplinary warnings issued to employee Dale Ray on December 4, 1978, notify him in writing that this has been done and that evidence of these unlawful warnings will not be used as a basis for future discipline against him, and make him whole for any loss of pay he may have suffered as a result of his refusal to perform painting on December 2 and 3, 1978, in the manner set forth for loss of earnings in the section of this Decision entitled 'The Remedy.'"

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

* On January 20, 1982, Respondent requested en banc consideration of a motion for reconsideration of that portion of the Board's Order in this proceeding regarding the promulgation of rules regarding lunch periods and hours of employment in the coke battery. At the request of the parties, Respondent's motion was held in abeyance in order to provide all parties an opportunity to resolve the issue in a manner satisfactory to all concerned.

Thereafter, on March 15, 1982, the Board received the General Counsel's and Respondent's joint motion to amend the Board's Order. Respondent contends, and the General Counsel and Charging Party now agree, that par. 2(a) of the Administrative Law Judge's Order, which was adopted by the Board, added new terms and conditions of employment to the existing contract. The parties are in agreement that the terms and conditions of employment of Respondent's mechanical employees would have changed irrespective of the unfair labor practices committed by General Foreman Sanger. Upon amendment of the Board's Decision and Order as requested, Respondent agrees to comply with the Board's Order and withdraws its previously filed motion for reconsideration.

The Board, having duly considered the matter, on April 1, 1982, granted Respondent's request to withdraw its motion for the Board en banc to consider the contemporaneous motion for reconsideration; granted the General Counsel's and Respondent's joint motion to amend the Board's Order; and amended its Order. The Board's Order and the notice for posting herein reflect that amendment.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent has also contended that the Administrative Law Judge's interpretation of the evidence and his credibility findings were biased and prejudiced. Upon careful examination of the Administrative Law Judge's Decision and the entire record, we are satisfied that the contentions of Respondent in this regard are without merit.

Finally, in accord with the General Counsel's exceptions, we hereby correct two inadvertent errors made by the Administrative Law Judge in sec. II,D,1, of his Decision. The Administrative Law Judge's reference to Ray's assignment of rustproofing steel blocks and spare parts as "usual" is inaccurate; the word "usual" should read "unusual"; (2) also in sec. II,D,1, the Administrative Law Judge inaccurately stated that Sanger's recollection of the time of his decision to assign Dale Ray to rustproofing shifted from late June or July to early July or mid-July 1978. The record reveals that Sanger initially testified that he decided to assign Ray to rustproofing around August 20, 1978, and later testified that Ray was assigned to rustproofing around the end of June or beginning of July 1978. Neither of these inaccurate statements affects the ultimate disposition of this case.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

WE WILL NOT threaten employees with more rigid working conditions because they initiate or process a grievance under our collective agreement with Local 1010, United Steelworkers of America, AFL-CIO, or otherwise seek to vindicate provisions of the collective-bargaining agreement, or because they engaged in other protected concerted activity covered by the National Labor Relations Act.

WE WILL NOT reduce the length of employees' lunch breaks, eliminate washup time, or otherwise impose harsher conditions of employment upon employees because fellow employees are initiating or processing grievances under our collective-bargaining agreement with Local 1010, United Steelworkers of America, AFL-CIO, or any other labor organization, or because they engage in union or other protected concerted activities for the purpose of collective bargaining or other mutual aid and protection.

WE WILL NOT discourage the filing and processing of grievances under a collective-bargaining agreement or other union activity on behalf of Local 1010, United Steelworkers of America, AFL-CIO, or any other labor organization, by discriminating against its employees in the assignment or scheduling of work or by other changes in wages, hours, or conditions of employment.

WE WILL NOT assign employees to perform rustproofing, painting, or other work, or assign them to the midnight shift or otherwise affect their wages, hours, or conditions of employment because they initiated or processed a grievance or because they engaged in union or other protected concerted activities for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL rescind General Foreman Robert Sanger's July 20, 1978, announcement and July 21, 1978, statement of rules regarding lunch periods and hours of employment for the interim period of start-up in the No. 11 Coke Battery; and WE WILL make whole all mechanical maintenance employees of No. 11 Coke Battery who were denied a washup period at the end of their shift and had their lunch period reduced from 30 minutes to 20 minutes, by paying each employee for 15 minutes per day 5 minutes for washup time and 10 minutes for lunchtime) from July 20, 1978, to September 23, 1978.

WE WILL make whole the mechanical employees of No. 11 Coke Battery, because we unlawfully penalized them on or about July 21, 1978, for taking a 15-minute washup period, by paying them any loss of earnings, plus interest, they may have suffered, by removing and expunging from their personnel files all references to the unlawful disciplinary actions taken against them, and by informing them in writing both that we have expunged our files and that evidence of our unlawful actions will not be used as a basis for future discipline against them.

WE WILL make Dale Ray whole for any loss of earnings he may have suffered as a result of the discrimination against him, with interest.

WE WILL remove and expunge from Dale Ray's personnel file and our records all copies or other evidence of the disciplinary letters we issued to him on December 4, 1978, and WE WILL notify him, in writing, both that this has been done and that evidence of these unlawful letters will not be used as a basis for future discipline against him.

INLAND STEEL COMPANY

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge: Upon a charge filed by Dale Ray, an individual, the Regional Director for Region 13 of the National Labor Relations Board issued a complaint and notice of hearing in this case on January 31, 1979. The complaint, as amended, alleges that Respondent, Inland Steel Company, referred to below as the Company, violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.*, herein called the Act. The Company, by its timely answer, denies commission of the alleged unfair labor practices.

Upon the entire record, including my observation of the demeanor of the witnesses at the hearing, and after due consideration of the briefs[1] filed by the General Counsel and the Company, I make the following:

[1] The General Counsel's motion to correct the record is granted. The corrections are contained in Appendix A of this Decision. [Omitted from publication.] I also find merit in the General Counsel's motion requesting me to disregard writings which appear to be arbitration decisions which are labeled attachments "A" and "B" and which the Company appended to its brief. As the Company did not offer the proffered written evidence and authenticate it at the hearing, I have granted the General Counsel's motion and have disregarded them.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The Company, a Delaware corporation, is engaged in the manufacture of steel products. In the course of its business operations, the Company annually receives at its East Chicago, Indiana, plant materials valued in excess of $50,000, all of which are shipped directly from points outside the State of Indiana. In its answer, the Company admits the foregoing data and concedes that at all times material it was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and I so find.

The complaint alleges, the Company in its answer admits, and I find that Local 1010, United Steelworkers of America, AFL-CIO, referred to as the Union, is, and has been at all times material to this case, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

The Company's plant, known as the Indiana Harbor Works, employs approximately 24,000 persons. Since 1942, the Union has been the bargaining representative of the Company's production and maintenance employees under a series of collective-bargaining agreements, the latest of which has been in effect since August 1, 1977.

In March 1978,[2] Dale Ray, a company employee, testified in a National Labor Relations Board hearing in Case 13-CA-16952. Thereafter, on June 15, Administrative Law Judge Benjamin K. Blackburn issued a decision in that case, which the Board adopted,[3] concluding that the Company had violated the Act "[b]y maintaining a no-distribution rule which forbids employees to distribute literature in nonwork areas on nonwork time and which requires them to obtain prior approval of such material by submitting a copy to management before even bringing it into the plant . . . . [238 NLRB at 1206.]" Administrative Law Judge Blackburn also found that the Company violated the Act "by conditioning the right of Thomas Zangrilli and Dale Ray to report for work on October 2, 1977, on compliance with an invalid no-distribution rule . . . . [*Id.* at 1207.]" In July Ray and fellow employees filed a grievance complaining that salaried foremen had performed bargaining unit work.

The issues presented are: (1) whether the Company, in response to the grievance, violated Section 8(a)(1) of the Act by threatening employees with strict working conditions; (2) whether the Company carried out that threat and thus violated Section 8(a)(3) and (1) of the Act, by curtailing the lunch period and washup time previously enjoyed by its No. 11 Coke Battery mechanical employees; and (3) whether the Company assigned No. 11 Coke Battery mechanic Dale Ray to rustproofing and painting for more than 5 months and transferred him to the night shift for 1 week in retaliation for his participation in the earlier Board unfair labor practice proceeding and because of his role in the filing of the grievance.

[2] Unless otherwise stated all dates are in 1978.

[3] *Inland Steel Company*, 238 NLRB 1204 (1978).

B. *Alleged Interference, Restraint, and Coercion*

During the week of July 17, Dale Ray, who was a mechanic employed in No. 11 Coke Battery, discussed the pending grievance with No. 11 Coke Battery's general mechanical foreman, Robert Sanger. Sanger asked Ray why he was filing a grievance. Ray replied that it was not his grievance alone, that there were eight employees involved, and that the cause of the grievance was the employment of salaried foremen to do bargaining unit employees' work.

Sanger pressed Ray for the names of the foremen who had been doing the unit work. Ray responded that it was Mechanical Foreman Lawrence Woodworth of No. 11 Coke Battery, and some other mechanical foremen who had been working at the plant on weekends, when "there was no one else working."

Sanger sought to persuade Ray that the grievance was unwarranted. Sanger said that Foreman Woodworth "had made an honest mistake" and that Woodworth had not been a salaried supervisor "for that long." Sanger added that he "could guarantee that it would not happen again" and questioned the need for filing the grievance.

Ray insisted that the grievance was warranted in light of the wages lost by unit employees. Ray hastened to argue that anyone who had been in the Company's employ as long as Woodworth had should recognize that salaried foremen did not perform unit work.

Sanger suggested that employees bring their complaints to him rather than immediately file a grievance. Ray replied that, if Sanger wished, the other grieving employees might agree to meet with Sanger. However, Ray disclaimed the role of spokesman for the group.

At this, Sanger expressed his view that such a meeting was unnecessary, and that Ray could convey Sanger's thoughts to the other grievants. Sanger added that, if any of them wanted to discuss the matter with him at that point, they could do so. Ray agreed to convey Sanger's sentiments to the concerned employees.

In the wake of Ray's last response, Sanger warned that the "department could be run one of two ways." He explained in substance that No. 11 Coke Battery could continue to operate "with a little bit of give and take" or it "could be run by the book," a circumstance "which could be worse" for employee Ray than it would be for Sanger. At this, Ray insisted that the grievance "was important" and that he intended "to pursue it." Sanger concluded the conversation stating, "If that's the way you feel about it, have the griever contact me and set up a meeting."[4]

On or about July 15, Mechanical Foreman Kenneth Gearhart, a supervisor in No. 11 Coke Battery, while driving in a truck at the Company's plant, with employee

[4] My findings regarding the foregoing conversation between General Foreman Sanger and employee Ray are based on the latter's full and forthright testimony. In his testimony, Sanger admitted that he discussed the grievance with Ray on or about July 17 or 18. However, Sanger's version does not include a warning of changed atmosphere in No. 11 Coke Battery. Nor did Sanger's testimony include a denial that he made the threat attributed to him by Ray. In assessing the two versions, I note that, unlike Ray, who appeared to be giving his best recollection of the details of the conversation, Sanger was content to provide a superficial account.

Patrick O'Sullivan, spoke of the pending grievance concerning supervisors performing unit work. In this context, Gearhart remarked: "If these guys go through with this grievance, things are going to get much worse in this department."[5]

Under Section 7 of the Act,[6] employees enjoy the right to file grievances with their collective-bargaining representative regarding wages, hours, and conditions of employment. *General Motors Corporation, Packard Electric Division*, 232 NLRB 335 (1977). It follows that a threat of reprisal against employees because they have filed a grievance regarding one of those concerns interferes with, restrains, and coerces employees in the enjoyment of that right, and therefore violates Section 8(a)(1) of the Act. *A & W Products Company, Inc.*, 244 NLRB 1128, 1129 (1979). *Precision Castings Corporation, Division of Aurora Corporation, a wholly owned subsidiary of Allied Products Corporation*, 233 NLRB 183, 188 (1977).

I find here that Sanger's remarks to Ray included a warning of reprisal for the No. 11 Coke Battery employees resort to a grievance regarding their claim that a supervisor had wrongfully deprived them of wages by performing unit work. Considered in context Sanger's remarks about the manner in which No. 11 Coke Battery could be operated was a threat that he, who was their general foreman, had authority to impose strictures to make life more difficult for all of the employees because three of them had filed a grievance. I find that this threat was likely to restrain, coerce, and interfere with the employees in their enjoyment of their Section 7 right to file grievances under the collective-bargaining agreement. I therefore find that by Sanger's warning the Company violated Section 8(a)(1) of the Act. I also find that Gearhart's more direct warning violated Section 8(a)(1) of the Act.[7]

C. *The Reduction of the Lunch Break and the Elimination of Washup Time for the Mechanical Employees of No. 11 Coke Battery*

On or about July 20, Sanger told the mechanical employees of No. 11 Coke Battery that they were only entitled to a 20-minute lunch period and that there would not be any washup time at the end of their shift. This announcement came 1 day after Sanger had observed his mechanical employees leaving their work area approximately 20 minutes before the termination of their shift. Along with his announcement regarding lunch periods and cleanup time, Sanger told the mechanical employees of No. 11 Coke Battery that they would lose pay for 30 minutes due to their early departure on the previous day. On July 21, Sanger posted a notice at No. 11 Coke Battery which announced the following:

> For the interim period before start-up the hours of work for the Mechanical gang shall be 6:30 A.M. to 2:30 P.M. This means that you will report to the Mechanical Turn Foreman ready for a work assignment promptly at 6:30 A.M. It further means that you will not leave your assigned work area to go home before 2:30 P.M. The lunch period shall be a paid 20-minute period, conditions permitting, to begin at 12:00 noon and end at 12:20 P.M. Persons not complying with these guidelines will be subject to discipline.

At all times material, the collective-bargaining agreement covering Sanger's employees contained the following in article 10, section 1(b):

> The normal work day shall be eight (8) hours of work in a twenty-four (24) hour period. The hours of work shall be consecutive except when an unpaid lunch period is provided in accordance with prevailing practices.

However, prior to Sanger's announcement, his mechanical employees did not adhere to the letter of the quoted contract language.

I find from the testimony of employees Ray, Williams, and Powers that, prior to Sanger's announcement, No. 11 Coke Battery's mechanical employees, as a matter of practice, took a paid 30-minute period for lunch. Approximately 3 weeks before the posting of the notice quoted above, Mechanical Turn Foreman Kenneth Gearhart had admittedly instructed the No. 11 Coke Battery mechancial employees under his supervision to limit their lunch periods to 30 minutes between noon and 12:30 p.m. "until further notice." In view of Gearhart's instructions and the common practice of the mechanical employees, I find that Sanger, Gearhart's immediate supervisor, was at all times aware that his employees were enjoying 30-minute lunch periods prior to on or about July 20.

I find from the testimony of employees Ray, Williams, and Powers that, prior to Sanger's announcement and posted notice, the No. 11 Coke Battery's mechanical employees would regularly leave their respective work stations around 15 or 20 minutes before the termination of their shift and proceed to their locker room where they put away tools, washed up, changed clothes, and prepared to leave the plant.[8] Here again, the practice con-

[5] My findings regarding Gearhart's remark to O'Sullivan are based on the latter's testimony. Of the two, O'Sullivan impressed me as being the more conscientious toward his role as a witness. Gearhart required reminders on no less than four occasions that "uhm-hum" is not a word. On occasions he appeared to be evasive during cross-examination by counsel for the General Counsel. In any event, Gearhart did not flatly deny the remarks attributed to him by O'Sullivan.

[6] In pertinent part, Sec. 7 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .

[7] The complaint did not include an allegation that Gearhart's threat violated Sec. 8(a)(1) of the Act. However, as I find that Gearhart's remark was closely related to the subject matter of the complaint and was fully litigated, my finding that it violated Sec. 8(a)(1) accords with Board policy. *The Timken Company*, 236 NLRB 757, 758 (1978).

[8] In his testimony, Sanger conceded that it was "entirely possible" that foremen had granted mechanical employees a washup time at the end of their shift. However, I find that, prior to or on or about July 20, No. 11 Coke Battery's mechanical employees openly took washup time and that Foreman Gearhart expressly instructed employees to do so. I have also considered the infirmities in Sanger's testimony, as discussed elsewhere in this Decision, which impaired the reliability of his testimony. From these circumstances, I find that, prior to July 20, he was aware that his employees regularly enjoyed a washup period.

formed to Foreman Gearhart's instructions to his employees.[9] As of the time of the hearing, the Company continued to implement the lunch hour and washup policies announced by Sanger in July.

Throughout July and August, No. 11 Coke Battery was in the final stage of its 3-year construction period. No. 11 began production on September 23. On August 20, the Company divided No. 11 Coke Battery's mechanical employees into thee-shifts. Prior to that date, all mechanical section employees of No. 11 Coke Battery worked on a day shift.[10] The notice of July 21, recited above, was the first notice posted in No. 11 Coke Battery regarding hours of work. Further, the Company has never issued any notice concerning that topic to any of No. 11's other sections.

The General Counsel contends that the Company reduced the lunch break and eliminated washup time for the mechanical employees of No. 11 Coke Battery because employees Dale Ray, Jack Johnson, and Irvin Williams were pressing their grievance. The Company denies this contention and urges that only "legitimate business purposes" motivated its decision to impose these strictures. I find ample evidence to support the General Counsel's contention.

No doubt the sudden reduction of their lunch period from 30 to 20 minutes and the elimination of washup time were unpleasant changes in the working conditions of No. 11 Coke Battery's mechanical employees, and that the source of these announcements was, as General Foreman Sanger suggests, a nexus between his earlier confrontation with No. 11 Coke Battery mechanical employee Dale Ray and these changes.

General Foreman Sanger had become displeased with the stated intention of No. 11 Coke Battery employees Ray, Johnson, and Williams to press their grievance. Sanger's hostility towards the pending grievance provoked him into seeking a confrontation with Ray on or about July 17. In that encounter, Sanger sought to persuade Ray that the grievance was unnecessary. When Sanger saw that his effort was failing, Sanger threatened to operate "by the book," and warned that it would "be much worse for [Ray] than it would be for him" if Sanger did so. Thus did Sanger's hostility provoke him to threaten Ray and his fellow employees with less pleasant working conditions if Ray and his colleagues pressed their grievance. Ray, Johnson, and Williams did not waiver in their determination to press the grievance.

Finally, the timing of Sanger's announcements strongly suggests that he was carrying out his unlawful threat. Thus, they came a little more than 2 days after he had voiced his threat to supervise his employees "by the book."

I find no merit in the Company's contention that Sanger imposed the limitation on lunch and eliminated washup time because of changed operating conditions in the No. 11 Coke Battery. For, No. 11 Coke Battery did not begin production until on or about September 23.[11] Further, the Company did not show any change in No. 11's startup operations prior to Sanger's announcements and notice to otherwise explain the restrictions he imposed.

In sum, I find that General Foreman Sanger's imposition of strictures upon the lunch and washup practices of the No. 11 Coke Battery mechanical employees was motivated by his hostility toward the pending grievance of employees Johnson, Williams, and Ray. I also find that the deduction of 30 minutes' pay from wages due mechanical employees of No. 11 Coke Battery on or about July 19 was also motivated by the same hostility.

By these strictures and the penalty the Company unlawfully interfered with its employees' Section 7 right to file a grievance with their collective-bargaining representative and thereby violated Section 8(a)(1) of the Act. The same conduct also constituted discrimination in violation of Section 8(a)(3) of the Act. *General Motors Corporation, Packard Electric Division*, 232 NLRB 335 (1977).

D. *The Alleged Discriminatory Treatment of Dale Ray*

1. The facts

During the week beginning July 21, employee Stephen Bechtel overheard Foreman Gearhart discussing the grievance filed by Dale Ray, Irvin Williams, and Jack Johnson. Gearhart described Dale Ray as "a union man agitator type." He referred to Williams as a follower and expressed curiosity as to why Johnson was involved.[12]

Dale Ray's name came up at or about the same time in connection with an unfair labor practice proceeding against the Company. The July/August issue of the Union's newspaper, *Local 1010 Steelworkers at Inland Steel Company*, contained the following article under a headline "Members Stick Up For Their Rights—Back Inland Down":

> Tom Zangrilli and Dale Ray of #4 BOF came to work one night with a stack of newspapers to pass out to any one who might be interested. Because these papers had a radical point of view, the guards refused to let Tom and Dale enter the plant with them. The two knew that any employee has a right to distribute literature relating to the union or union activities in non-working areas (canteen, locker rooms, lunch shanties, etc.) on non-working times (before and after work, lunch and coffee breaks).

[9] Ray testified that, prior to Sanger's notice, Foreman Gearhart had instructed the mechanical employees under his supervision to follow the washup practice. Gearhart testified that the only instructions he gave his employees about cleaning up was that they could police up their work areas beginning 10 minutes before the end of their shift. However, as I found Ray to be the more reliable witness, I have credited his testimony.

[10] The mechanical section is one of the seven sections constituting the No. 11 Coke Battery Department. As of January 15, 1979, No. 11 Coke Battery consisted of 380 hourly employees, 40 foremen, 7 general foremen, and 1 assistant superintendent. Sanger's mechanical section performs No. 11's maintenance. Its complement consists of 39 mechanics, 54 apprentices, and 14 foremen.

[11] I based this finding on the testimony of Company Superintendant McMorris.

[12] My findings regarding Gearhart's remarks are based on Bechtel's testimony. Gearhart did not deny making the remarks attributed to him by Bechtel.

They refused to surrender their legal rights, and thus lost a day's pay.

The Supreme Court affirmed employees' rights to distribute union literature on company property. The rulings upheld findings by two lower courts against a Time Inc. subsidiary and Beth Israel Hospital of Boston. In both cases, the Justices relied on long standing rulings that off-duty workers can solicit for a union except in "special circumstances" and can hand out literature in non-working areas.

NLRB

They took the matter to the National Labor Relations Board (NLRB). This is the federal agency in charge of administering the federal labor laws (not to be confused with the Inland Steel's Department of "Labor Relations.") *The NLRB said the Company was wrong and Inland was ordered to pay all time lost with interest.* A notice of this and the regulations governing distribution of literature must be posted by the Company where everyone can see it.

Unless the Company appeals this decision and it is overturned by the Court (a highly likely possibility see article above) we can assume that they will not recognize our right to distribute union related literature in the plant.

The decision referred to in the quoted article was Administrative Law Judge Blackburn's decision in *Inland Steel Company*, Case 13-CA-16952.

On an occasion during the last 2 weeks of July, after Ray had received a copy of the Union's newspaper and after his conversation with Sanger, No. 11 Coke Battery's superintendent, Charles E. McMorris, summoned Ray to his office.[13] General Foreman Sanger had by this time described Ray to McMorris as the "spokesman" for the grieving employees. When Ray presented himself, McMorris showed him a copy of the Union's newspaper containing the quoted article. Although McMorris said he had seen the article, he asked Ray to summarize it. Ray explained that the article discussed a Board case concerned with distribution of literature in nonworking plant areas during nonworking time. McMorris asked what Dale meant by "nonworking areas and nonworking time." Dale explained that he meant "in the locker room before and after work and in the lunch room during the lunch break."

The two then joined issue on the question of distribution of literature. McMorris complained that the distribution of literature in the employees' locker room created a "very bad litter problem." He said he hoped that Ray would attempt some other means of communicating with his fellow employees. Ray expressed displeasure at employees who threw literature on the floor. However, he insisted that, if he believed there were a need for such distribution, he would do so and McMorris would be obliged to solve the litter problem. McMorris then focused his attention upon Ray's motive for distributing literature. McMorris said that Ray should not use his working hours at the plant in an attempt "to change people's ideas about the Union." Ray asserted that he knew what he was being paid for and that he also knew his rights, and that McMorris need not worry that Ray would exceed those rights. Ray added that he intended to use the rights. McMorris acknowledged Ray's rights but cautioned that if Ray exceeded those rights that he, McMorris, would have to do something about it.

McMorris drew Ray's attention to the current collective-bargaining agreement stating that he considered it to be "law," and that he adhered to it "to the letter." Ray responded that he also adhered to the contract. McMorris went on to explain how the Company had won a grievance against the Union at the arbitration stage which he, McMorris, had pressed. Ray asked McMorris if that were all that McMorris wanted to talk to him about, and McMorris responded yes, unless Ray had some other matter to raise.

Ray asked McMorris if it were possible to settle the pending grievance. McMorris rejected the suggestion on the ground that he believed that the matter should be taken through the grievance procedure. At this, the conversation broke off and Ray left McMorris' office.

On July 28, the grievance reached step one when General Foreman Sanger and the Union's official griever, employee J. Freeman, discussed the matter of a supervisor doing unit work. Thereafter, on August 7, Sanger decided to resolve the grievance by admitting that a supervisor had performed bargaining unit work, assuring the employees that a repetition of this infraction would not occur, and agreeing to make grieving employees Ray, Johnson, and Williams whole for their loss of wages. The Union accepted Sanger's resolution of the grievance.

Two hours before the conversation with McMorris, Foreman Alfred Hernandez assigned Ray to wash a Grove mobile crane with soap and water. Present at the time Hernandez gave Ray this instruction, were four or five mechanical employees including Mike Baculla. Dale Ray questioned Hernandez' instructions and reminded him that Baculla had washed the machine on the previous day. Hernandez responded that soap had not been available when Baculla washed the Grove on the previous day and that it was available now. Ray insisted that there was only "mill dirt" on the crane and expressed doubt that further washing would improve its appearance. Hernandez insisted that Ray wash the crane adding that "they" wanted Ray to wash it. Ray asked who Hernandez was referring to but received no response except direction to perform the work. As a matter of practice, prior to this incident, the crane's operators were responsible for washing it. Prior to Hernandez' assignment of that task to Ray the latter had not operated the Grove.[14]

On the day after Dale Ray's confrontation with Superintendent McMorris, Foreman Gearhart assigned[15] Ray

[13] My findings regarding Ray's conversation with McMorris are based on Ray's and McMorris' testimony.

[14] My findings regarding the confrontation between Hernandez and Ray are based on Ray's testimony. Of the two, Ray seemed to have the more vivid recollection.

[15] Gearhart testified that he made the assignment on his own initiative in early July. Gearhart also testified that he made the assignment in part because Ray could not operate mobile equipment due to his vision. I also find from Stephen Bechtel's testimony that, before Ray began rustproof-

Continued

to rustproofing some small steel blocks. Gearhart made the assignment at 7 o'clock that morning, instructing Ray to accompany him to the No. 11 Coke Battery's shop area, where the steel blocks were located. Gearhart instructed Ray to use a 1-inch paint brush to apply the compound from a 55-gallon drum. Gearhart instructed Ray to perform this task in an area of the shop where he would be by himself and where the floor was clear.

At the time Sanger made the assignment, Ray had been a mechanic for 2 years. Prior to that, he had undergone an apprenticeship at the Company's plant. In sum, Ray had been in the Company's employ for approximately 5-1/2 years.

There were other employees of lesser skill employed in No. 11 Coke Battery at the time of Ray's assignment. Apprentices and laborers were in its work force. The laborers were the lowest paid employees in the department. Ray and his fellow mechanics were among the most highly paid employees in No. 11 Coke Battery.

From late July 1978 until the middle of January 1979, Ray was assigned to rustproofing. First he covered steel blocks and later spare parts. He rustproofed two different types of blocks. The first was a rectangular block with a hole that had tap threads. He rustproofed approximately 4,000 of that variety. He also rustproofed 6,000 rectangular blocks, each of which had a round piece welded to it. In the course of this assignment, Ray heard fellow employees refer to him as "Rusty Jones."

Ray conceded that rustproofing was part of a mechanic's work. However, he also credibly testified that, while rustproofing is part of a mechanic's job, assignment to that task for a 5-month period was extraordinary. Indeed, his was the only incident of such an assignment that he knew of.

Other witnesses considered Ray's assignment to be abnormally long. James Lanigan, who had been in the Company's employ for approximately 4 years at the time of the hearing, and had been in No. 11 Coke Battery since March 1978, considered the length of Dale's assignment to rustproofing to have been unusual for a mechanic. Lanigan was not aware of another mechanic or apprentice mechanic in No. 11 Coke Battery ever having been assigned to rustproofing for more than 1 week at a time.

Mechanic Jack Johnson, an employee of No. 11 Coke Battery since June 1, and a company employee for 4 years, was not aware of any No. 11 Coke Battery mechanic, aside from Dale Ray, who had been assigned to rustproofing for 5 months or longer. Further, based on his experience of 4 years with the Company, he considered Ray's assignment to be unusual.

Irvin Williams, who at the time of the hearing had been a company employee for 3-1/2 years and had been employed in No. 11 Coke Battery for approximately 14 months as a welder, was not aware of any employee at No. 11 Coke Battery, other than Dale Ray, who had ever been assigned to do rustproofing for 5 months or longer. Nor was he aware of any employee of No. 11 Coke Battery who had been assigned to do rustproofing for more than a month at a time. Employee Wayne Powers, who at the time of the hearing had been employed by the Company for 7 years and worked in No. 11 Coke Battery as a mechanical apprentice for approximately 1 year, was not aware of any mechanic, other than Ray, whom the Company had assigned to do painting in No. 11 Coke Battery for 5 months or longer. Nor was he aware of any other mechanic or apprentice mechanic other than Ray who, as of the time of the hearing, had been assigned to do painting in No. 11 Coke Battery for 1 month or longer. He was not aware of a mechanic or apprentice mechanic other than Dale Ray who was assigned to do painting for more than 1 week in No. 11 Coke Battery. Finally, he testified credibly that Dale Ray's assignment of rustproofing was not a normal assignment.

The Company unsuccessfully attempted to show that Ray's assignment was considered favorably by No. 11 Coke Battery employees. General Foreman Sanger, Foremen Gearhart, Hernandez, and Johnson testified that employees inquired about obtaining Dale Ray's rustproofing assignment or similar work. However, Gearhart and Johnson punctuated their testimony in this regard with smiles and chuckles. Hernandez testified that he did not reply to employees Dale Hamilton and Richard Bailey. Sanger testified that he received similar inquiries from employees Jack Johnson and Dale Hamilton. However, employees Hamilton and Johnson both testified that they did not want to do rustproofing. Initially the Company's testimony suffers from the infirmity of being hearsay. However, the sarcastic demeanor of witnesses Gearhart and Johnson as they testified and the credible testimony of two current employees, Hamilton and Johnson, strongly suggested that Ray's fellow employees were not in fact envious of him.

On approximately six occasions between July 1978 and mid-January 1979, Dale Ray received brief assignments to handle mechanical breakdowns. However, he spent 90 to 95 percent of his time rustproofing. When Ray took a 2-week vacation during the last part of October and the first days of November, the Company assigned no one to perform the rustproofing.

On the day that Foreman Gearhart first assigned Ray to rustproofing, employee James Lanigan began to assist in the work. Lanigan had no definite work assignment and had been instructed by his immediate supervisor to assist employees who might need help. Lanigan chose to help Ray.

Approximately 20 minutes after Lanigan began assisting Ray, Gearhart approached. He inquired why Lanigan was assisting Ray. Upon hearing the explanation,

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ing, Gearhart with a chuckle took credit for devising "a good job for Mr. Ray." However, Sanger testified that it was his decision to assign Ray to rustproofing. I am doubtful of Sanger's recollection of the time of his decision which, in his testimony, he shifted from late June or July to early July or mid-July. I also rejected, as unreliable, Foreman Lawrence Johnson's speculation that Ray began rustproofing in late May. I have accepted Dale Ray's recollection of the timing of the assignment. His convincing testimony was corroborated by O'Sullivan and Foreman Hernandez.

As for the issue of who decided to make the assignment, I have accepted Sanger's admission. Of the two, he appeared more concerned than was Gearhart about Ray's grievance activity. By the time of the assignment Sanger had already evidenced his concern by imposing reprisals upon the mechanical employees. Further, of the two, Sanger seemed more at ease as he frankly took credit for the decision.

Gearhart directed Lanigan to seek another assignment.[16] For the next 2 months, Ray received no help in rustproofing. hereafter, on two or three occasions, the Company assigned an apprentice, for 1 day, to help Ray rustproof spare parts.

Foreman Gearhart also prevented other employees from coming in contact with Ray during the months of rustproofing. In the first month of this assignment, Ray overheard Gearhart on several occasions order employee Jack Johnson, who was either moving towards Ray's area or standing nearby, not to talk to Ray.[17] Gearhart issued a similar warning to employee Wayne Powers.[18] In each instance, Gearhart threatened to send the employee home if the employee violated the order.

Gearhart also issued warnings to employees Williams and O'Sullivan regarding their contacts with Ray. Out of Ray's presence, Gearhart told Williams to stay away from Ray, warning that Ray would "get Williams in trouble." Gearhart issued a similar injunction to employee O'Sullivan, also out of Ray's hearing.

On another occasion in August, Gearhart approached O'Sullivan at the plant after the latter had returned from Ray's end of the shop. After "shaking his finger like a parent," he warned O'Sullivan: "I don't want you down there talking to that man anymore. You're not supposed to talk to him." O'Sullivan protested: "I haven't been told that since I was out of grade school. My parents don't even have to tell me who I can or who I can't talk to anymore." Gearhart pointed his shaking finger at Dale Ray during this exchange. Prior to this encounter O'Sullivan had been talking to Ray for approximately one minute about O'Sullivan's recent vacation.[19]

Gearhart's instruction to employees Johnson, Williams, and O'Sullivan were unique. None of the three had ever before received instructions from company supervision to cease talking to, or remain away from, a fellow employee. Dale Ray also never heard a company supervisor give such instructions to employees regarding another employee.

Four or 5 weeks after Ray began rustproofing, he suggested a change in the procedure to General Foreman Sanger. Ray suggested taking the boxes in which the steel blocks were stored, putting a drain on them and a lid and filling the boxes with oil to prevent the blocks from rusting. Sanger rejected that process saying it would be too messy and that he wanted the blocks rustproofed with a brush.

In September, Ray complained to General Foreman Sanger about "rustproofing all the time." Ray asked why the Company could not employ an apprentice or laborer to do that work in view of the shortage of mechanics at No. 11 Coke Battery. Sanger responded that Ray had received the assignment because he was a mechanic and thus did not need constant supervision. Ray went on to complain that whenever he looked up from his work "there was a foreman standing over me or harassing me about something." Sanger denied being aware of such conduct by supervisors. Ray asked how long the rustproofiug assignment would last. Sanger replied he did not know and that it could last "indefinitely." At this the conversation broke off.[20]

On the following day, the Company posted a shift schedule for No. 11 Coke Battery's mechanics covering the first week of October. The schedule showed that Ray was transferred from the day shift to the midnight shift. Thereafter, Ray worked on the midnight shift for only 1 week. The Company returned Ray to the day shift where he remained until the middle of February 1979. While assigned to the midnight shift, Dale Ray continued to perform rustproofing. To his knowledge no one continued his work on the day shift while he was on the midnight shift.

On or about December 2, Foreman Riggsby directed Ray to apply an undercoating paint to the storage loft located over the carpenters' area in No. 11 Coke Battery's mechanical shop. Ray balked at this assignment telling Riggsby that he did not believe that it was "a mechanic's job" and refused to perform the work. Riggsby told Ray to discuss the matter with General Foreman Sanger.

Ray immediately presented himself in General Foreman Sanger's office, where he complained that the assignment he had received from Riggsby was not a mechanic's work. In the exchange which followed, Ray suggested that the work be assigned to a painter or laborer. Sanger asked if Ray was refusing to do the work and Ray conceded that he was, whereupon Sanger sent Ray home.

On the following day, Ray reported for work. He met Supervisor Riggsby who asked, "Are you ready to paint the loft?" Ray again refused. Whereupon Riggsby moved Ray's timecard out of his pocket, punched it, and directed Ray to go home.

Ray did not report to work on December 4. Instead, he went to the Board's Chicago office where he filed an unfair labor practice charge in the instant case.

As a result of Ray's refusal to perform the assigned paint job on December 2 and 3, the Company issued two disciplinary statements to him on December 4. In addition, Ray lost pay for December 2, 3, and an additional 8 hours on December 14. After December 4, Dale returned to work and painted the loft, a job which required until the middle of January 1979.[21]

I also find from Ray's testimony that at the end of May 1979 Foreman Lawrence Johnson, a shift foreman assigned to No. 11 Coke Battery, disclosed to Ray that General Foreman Sanger had scolded Johnson on those occasions when Johnson had relieved Ray of rustproofing to perform mechanical breakdown work. Johnson also disclosed that the reason Sanger was irked by John-

[16] My findings regarding Gearhart's encounter with employee Lanigan are based on Ray's and Lanigan's testimony which was largely corroborated by Gearhart.

[17] My findings regarding this incident are based on Dale Ray's and Jack Johnson's testimony.

[18] I based my findings regarding Powers' encounter with Gearhart on Ray's and Powers' testimony.

[19] My findings regarding Gearhart's encounters with Williams and O'Sullivan are based on Williams' and O'Sullivan's testimony.

[20] Ray's detailed version of this conversation is largely corroborated by Sanger. However, Sanger seemed to gloss over the encounter and was not careful to remember details. I have, therefore, credited Dale Ray's version.

[21] My findings regarding the storage loft painting assignment are based on Ray's testimony and the Company's records.

son's actions was because Superintendent McMorris wanted Ray to perform the rustproofing and nothing else.

2. Analysis and conclusions

There is much to show that prior to Dale Ray's assignment to rustproofing his superiors manifested annoyance at the grievance that he and two other employees had filed, and at the Board's decision indicating his right and the right of another employee to distribute union literature at the plant. Significantly, No. 11 Coke Battery's supervision considered Ray the leader of the grieving trio, and something of a union agitator.

General Foreman Sanger directed his animus at Ray to persuade him to withdraw the grievance. Sanger threatened reprisals against Ray's fellow employees and warned that it would "be worse for Ray" than it would be for Sanger if Sanger retaliated against the grievance. Ray remained steadfast in his intent to press the grievance.

Superintendent McMorris gave vent to his feelings by bluntly warning Ray to take care lest he go too far with his Section 7 right to distribute union literature and seek employee support for his union sentiment. McMorris also warned that he would run No. 11 Coke Battery strictly according to the contract. Ray insisted that he intended to exercise fully his Section 7 rights.

That Sanger imposed more onerous conditions on No. 11 Coke Battery's mechanical employees by truncating their lunch period and eliminating their washup time revealed his and the Company's willingness to resort to unlawful punishment when confronted with employees exercising their right to enforce a collective-bargaining agreement. These reprisals together with Foreman Johnson's disclosure suggest that Sanger and McMorris would not shrink from using a work assignment to punish a leading employee advocate of the Union and contract enforcement.

The opportunity to punish Dale Ray resoundingly appeared in the form of a lengthy menial job; 10,000 steel blocks needing rustproofing. Sanger admittedly seized this opportunity. The assignment to rustproof steel blocks and then spare parts for a total of 5-1/2 months was usual. The attempt to isolate Ray while he was thus engaged is further evidence of Sanger's and McMorris' punitive attitude. The chuckles of supervisors as they testified that other employees sought the same work reflect the tedium and unpleasant nature of the work. In September, when Ray complained to Sanger about the rustproofing, the general foreman responded. He transferred Ray to the midnight shift for 1 week. Finally, in December Sanger found one last opportunity to punish Ray. Well aware of Ray's resentment, Sanger assigned him to rustproofing a storage loft. In sum, I find strong support for the General Counsel's contention that the Company's treatment of Dale Ray ran afoul of Section 8(a)(3) and (1) of the Act.

However, I am not persuaded that the General Counsel has established a *prima facie* case showing that the Company violated Section 8(a)(4) and (1) of the Act. For, in his remarks to Ray, McMorris made no reference to Ray's participation in the Board proceeding in Case 13-CA-16592. Nor was there any reference in any of Sanger's remarks or in any other supervisor's remarks to Ray's role in that case. All of Superintendent McMorris' remarks focused on the limitations on Ray's right to distribute union literature and talk about his union sentiment during working hours at the plant.

To establish a violation of Section 8(a)(4) of the Act the record must show that the Company's discrimination against employee Ray was "because he has filed charges or given testimony under this Act." I find no such showing has been made. Accordingly, I shall recommend dismissal of the allegation that by its treatment of Ray the Company also violated Section 8(a)(4) of the Act.

The Company urges that its assignment of work to Dale Ray was free of unlawful motive. General Foreman Sanger, the management official who made these assignments to Ray, offered explanation of Ray's unusual treatment. However, I find Sanger's testimony casts serious doubt upon the Company's proffered defense.

Shifts in Sanger's testimony suggest a hasty improvision. He first testified that he chose Ray for rustproofing at the time that No. 11 Coke Battery's maintenance employees began going on shift work. However, at a later point in his testimony, Sanger testified that he assigned Dale Ray to do rustproofing before the mechanical employees began shift work. The record shows the mechanics in Sanger's section began shift work on August 20. According to Sanger's later testimony his decision was made "toward the latter part of June or first of July." Sanger also admitted that he was on vacation during the last week of June and at least through July 4.

I do not credit Sanger's explanation that he chose Dale Ray without knowledge of his qualifications other than that he was a mechanic, and that, for the latter reason, he and his foremen decided that Ray required only "a very minimum amount of supervision" and therefore was more suited to the assignment than an apprentice mechanic. Dale Ray Joined the No. 11 Coke Battery in March and his assignment to rustproofing came no less than 4 months later. I find it difficult to credit Sanger's testimony that by that time all he knew about Ray was that he was a mechanic. Moreover, the Company's records reveal that, on May 31 and June 30, No. 11 Coke Battery employed 8 mechanics and, that by July 31 this number increased to 22. Thus, it appears that the Company had at least seven other mechanics to chose from. Absent from Sanger's testimony is any specific comparison of Ray with the other No. 11 Coke Battery mechanics. A further infirmity in Sanger's testimony was his reluctance to characterize rustproofing. When counsel for the General Counsel asked him whether he would describe the application of rustproofing with a paint brush as a skilled job, Sanger's initial answer was: "I'm sure that some of your unions would describe that as a skilled job, yeah." When pressed again, Sanger answered, "I really don't know how to answer that." When reminded of his experience at Inland Steel and the fact that he was a supervisor of foremen in No. 11 Coke Battery, Sanger finally answered: "I would say semi-skill."

Nor am I satisfied with Sanger's explanation as to why he did not employ an apprentice mechanic to perform

the work assigned to Ray. According to Sanger, he did not choose an apprentice to do the job on the ground that he and his foremen wanted to provide them with "as much exposure as possible in the fastest possible time to a coke battery." However, the startup date of the battery was September 23, almost 2 months after Sanger assigned the rustproofing to Dale Ray. This circumstance suggested that the apprentice mechanics of No. 11 Coke Battery did not have the desired opportunity to observe No. 11 Coke Battery in operation at the time Sanger selected Dale Ray. Further, there were no training classes for the mechanics in No. 11 Coke Battery. Nor was there any training material regarding the startup of the coke battery. In sum, I find Sanger's explanation regarding the failure to select an apprentice other than Dale Ray lacking in substance.

Further, the Company made no attempt to explain why it could not relieve Ray of the tedium of painting 10,000 steel blocks and an unknown number of spare parts by rotating the job among the mechanical employees under Sanger's supervision. Nor was there any explanation for Sanger's refusal to relieve Ray of the tedium of the rustproofing work in September, when Ray complained.

Finally, Sanger's excuse for his assignment of Ray to the midnight shift on the week of October 1 does not withstand scrutiny. According to Sanger, he needed three employees to replace two employees who were absent from the midnight shift. The two absent employees were involved in the mechanical maintenance of No. 11 Coke Battery. Two of the three replacements filled in for the two absent employees, the third replacement, Dale Ray, performed only rustproofing. The unanswered question is why Dale Ray had to do rustproofing on the midnight shift instead of the day shift.

In sum, I find the Company's explanation of its treatment of Dale Ray fatally lacking in substance. The absence of a plausible explanation leaves unrebutted the strong evidence of unlawful motive recited above. I therefore find that the selection of Dale Ray to perform rustproofing on the steel blocks, the spare parts, and the storage loft was calculated to cause Dale Ray discomfort, deprive him of job satisfaction, and finally, to provoke him into refusing a work assignment. The Company meted out this harsh treatment to Ray because of his stubborn insistence upon pressing the grievance and his stated determination to distribute literature regarding union activity on the premises, under the limitations carved out by Board law. I find, therefore, that by this treatment, including the disciplinary letters and loss of pay imposed upon Ray for his refusal to paint the loft, the Company violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Inland Steel Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 1010, United Steelworkers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Company violated Section 8(a)(1) of the Act by threatening its employees with more rigid working conditions because they engaged in the protected concerted activity of filing and pursuing a grievance under a collective-bargaining agreement between the Company and the Union.

4. The Company violated Section 8(a)(3) and (1) of the Act by reducing the lunch break and eliminating the washup time for the mechanical maintenance employees of No. 11 Coke Battery, because fellow employees were pressing a grievance under a collective-bargaining agreement between the Company and the Union.

5. By assigning employee Dale Ray to perform rustproofing and painting work, and by assigning him to the midnight shift for a 1-week period, all because he engaged in union activity, including the distribution of literature on company premises and the pressing of a grievance under a collective-bargaining agreement, the Company violated Section 8(a)(1) and (3) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Company has not otherwise violated the Act.

THE REMEDY

Having found that the Company has engaged in and is engaging in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take affirmative action necessary to effectuate the purposes of the Act. I shall also recommend that the Company be ordered to restore the lunch period provided for the mechanical employees of No. 11 Coke Battery to 30 minutes, and that it restore to those same employees the 15-minute washup period provided prior to on or about July 21, 1978. I shall also recommend that the Company be ordered to make whole all mechanical employees of No. 11 Coke Battery who suffered loss of wages because they left their work area and took a 15-minute washup period on or about July 20, 1978. I shall also order the Company to make employee Dale Ray whole for the wages lost by reason of his refusal to perform painting on December 2 and 3, 1978, and to expunge from his personnel records all copies of the disciplinary letters the Company issued to him for such refusal. Interest on the backpay provided herein shall be computed in accordance with the Board policy described in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation, 231 NLRB 651 (1977).*

Upon the foregoing findings of fact, conclusions of law, and upon the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[22]

The Respondent, Inland Steel Company, East Chicago, Indiana, its officers, agents, successors, and assigns, shall:

[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Threatening employees with more rigid working conditions because they seek to vindicate a collective-bargaining agreement by pressing grievances or by other concerted activity protected by Section 7 of the Act.

(b) Reducing lunch breaks, eliminating washup time, or otherwise imposing more onerous conditions of employment on employees because their fellow employees are processing a grievance under a collective-bargaining agreement between the Company and Local 1010, United Steelworkers of America, AFL-CIO, or any other labor organization.

(c) Discouraging the filing and processing of grievances under a collective-bargaining agreement or other union activity on behalf of Local 1010, United Steelworkers of America, AFL-CIO, or any other labor organization, by discriminating against its employees in the assignment or scheduling of work or by other changes in wages, hours, or conditions of employment.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Rescind General Foreman Robert Sanger's announcement of on or about July 20, 1978, and his published statement of rules regarding lunch periods and hours of employment which was posted on or about July 21, 1978, in No. 11 Coke Battery and restore to the mechanical employees of that department their practices regarding lunch hours and washup time as they existed prior to July 21, 1978.

(b) Remove all disciplinary warnings and rescind all money penalties and other disciplinary action imposed on the mechanical maintenance employees of No. 11 Coke Battery, who on or about July 20, 1978, exercised their established practice of taking a 15-minute washup period at the end of their shift.

(c) Make whole the employees who suffered loss of pay on or about July 20, 1978, because they took a 15-minute washup period at the end of their shift in the manner set forth for loss of earnings in the section of this Decision entitled "The Remedy."

(d) Remove and expunge the two disciplinary warnings issued to employee Dale Ray on December 4, 1978, and make him whole for any loss of pay he may have suffered as a result of his refusal to perform painting on December 2 and 3, 1978, in the manner set forth for loss of earnings in the section of this Decision entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this recommended Order.

(f) Post at its East Chicago, Indiana, plant copies of the attached notice marked "Appendix B."[23] Copies of said notices on forms provided by the Regional Director for Region 13, after being duly signed by the Company's representative, shall be posted by the Company immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that that portion of the amended complaint which alleges that the Company violated Section 8(a)(4) of the Act be, and it hereby is, dismissed.

[23] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."